

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

HELEN E. HENKE,

Plaintiff,

v.

MICHAEL ASTRUE,
Commissioner of Social Security,

Defendant.

OPINION AND ORDER

11-cv-488-bbc

Plaintiff Helen E. Henke has brought this suit for judicial review of defendant Michael Astrue's denial of her application for Supplemental Security Income benefits. Plaintiff contends that the administrative law judge erred in rejecting plaintiff's showing that she was physically unable to perform substantial gainful work following the removal of her salivary glands. I conclude that the administrative law judge considered all of the evidence and reached the right result. Therefore, I will affirm the denial of benefits.

The following facts are drawn from the administrative record (AR).

FACTS

A. Background

Plaintiff was born on November 28, 1961. Her past work includes jobs as a hotel housekeeper and as a front desk receptionist at a hotel. She held the latter job from February 14, 2004 until September 5, 2006, AR 135-45, when she left to take care of her mother.

Plaintiff applied for disability benefits on December 28, 2007, alleging disability beginning in September 2006. Her application was denied initially and again after she moved for reconsideration. After she appealed, the agency scheduled a videoconference hearing before Administrative Law Judge Sharon Turner on August 20, 2009. Plaintiff was represented at the hearing by her counsel, Dana Duncan. Craig Roth, Ph.D., testified as an impartial medical expert and Jeanine Metildi testified as an impartial vocational expert.

In a decision issued on November 4, 2009, the administrative law judge found plaintiff not disabled. AR 20-29. On May 27, 2011, the Appeals Council wrote plaintiff to tell her that it had denied her petition to review the administrative law judge's decision, AR 2.

B. Medical Evidence from Treating Physicians

At the outset, I note that the parties agree that plaintiff suffers from bipolar disorder

as well as dysthymic disorder, that these disorders are controlled reasonably well by medication and that they were taken into account by the administrative law judge and the vocational expert in determining what jobs plaintiff could perform. Therefore, in summarizing the medical evidence, I will discuss only those aspects that relate to the issue in dispute, which is whether it was error for the administrative law judge to find that the record evidence did not support plaintiff's allegations that she suffers from neck pain, restrictions in neck movement, joint pain and chronic back pain.

1. Juan Preciado-Riestra, M.D.

Plaintiff saw Dr. Preciado-Riestra for the first time on September 17, 2007, when she was 45. She saw him again 11 times before November 11, 2008, when he examined her in preparation for a physical residual functional capacity requested by defendant. Her primary reason for the visits was her mental and emotional condition, which Dr. Preciado-Riestra diagnosed as bipolar disorder, but at her first visit she also talked with him about a previously diagnosed salivary gland obstruction. Plaintiff said that although she had had the obstruction since 1996, she had never gone to see a specialist about it. AR 197. She also told Dr. Preciado-Riestra that she had headaches, but that she had no visual symptoms with them, and that she had no chest pain, no shortness of breath, no joint pains and no weight changes. Id. On examination, Dr. Preciado-Riestra found that plaintiff appeared in no acute

distress; she was alert and oriented; and her neck was supple but with tenderness bilaterally around her submaxillary glands, with no clear enlargement or induration. Id. Dr. Preciado-Riestra referred her to ENT for evaluation of her salivary gland problems.

Plaintiff returned to Dr. Preciado-Riestra on October 18, 2007, complaining of a recent bump she had discovered on the back of her head. AR 196. Her main complaint was the lack of any improvement in her mood after taking the Lamictal he had prescribed the previous month. Id. Preciado-Riestra noted that the lump seemed to be an epidermoid cyst. He noted that plaintiff had an appointment with ENT in two days and could consult with the doctor about the cyst at that time. Id. (Plaintiff never referred to the cyst again on any visits to Dr. Preciado-Riestra.)

On November 13, 2007, plaintiff saw Dr. Preciado-Riestra, reporting that the Lamictal was relieving her symptoms and that she was to have a surgical intervention the next day “for marsupialization of her entire salivary gland.” AR 196.

On December 13, 2007, plaintiff saw Dr. Preciado-Riestra for a medication refill and followup. AR 276-77. She mentioned that she had recently injured the left side of her neck and her left shoulder when she bumped into a pipe in her home while examining a leak. Id. Dr. Preciado-Riestra did not prescribe any pain medication or provide plaintiff any treatment for her neck or shoulder.

On December 14, 2007, Dr. Preciado-Riestra filled out a medical examination and

capacity form for the Wisconsin Department of Workforce Development. AR 189. He listed plaintiff's medical problems as bipolar disorder, "sialolithiasis status post operative" ["sialolithiasis" is a condition characterized by the presence of sialoliths, which are calcareous concretions in the salivary glands or ducts. Dorland's Illustrated Medical Dictionary, p. 1706 (32nd ed.)] and neck marsupialization." ["Marsupialization" refers to the creation of a pouch. The term is "applied especially to surgical exteriorization of a cyst" and the establishment of a pouch for what was formerly an enclosed cyst. Id. at p. 1109.] He said that plaintiff could not turn her neck, could lift and carry up to 10 pounds, had limited ability to lift her arms above shoulder level, normal fine motor skills, the ability to stand and walk at least two hours a day and sit for at least two hours. Id. He recommended that she not do any pushing, pulling, bending or stooping. AR 190. In answering a question about the number of hours a day, 5 days a week, that plaintiff could participate in work within the noted restrictions, Dr. Preciado-Riestra wrote "0." Id.

At a January 15, 2008 visit, plaintiff complained chiefly of jaw pain following her November 2007 operation. AR 192. She also complained of some episodes of vomiting and dizziness after eating, which Dr. Preciado-Riestra attributed to her ingesting samples of Seroquel while still taking Lamictal. She made no mention of neck pain, limited range of motion in her neck or joint pain.

Plaintiff saw Dr. Preciado-Riestra again on February 25, 2008, for a followup

appointment and a Pap smear. AR 278. She made no mention of neck pain, limited range of motion in her neck or joint pain.

On March 6, 2008, plaintiff saw Dr. Preciado-Riestra for a physical examination. AR 340. He found her neck “Supple without adenopathy” [According to the Family Practice Coding Alert, <http://www.supercoder.com/articles/articles-alerts/fca/reader> (visited April 4, 2012)), the term reflects a determination that the neck is bendable without swollen nodes.] Her ears, nose, throat and lungs were clear.

Plaintiff returned on March 11, 2008 for an endometrial biopsy. AR 277. She reported no other concerns.

Plaintiff came back to see Dr. Preciado-Riestra on March 20, 2008 for a pre-operative physical examination in preparation for her second salivary gland surgery. AR 276. She reported no other concerns. Her chronic medical problems were listed as hyperlipidemia [“elevated levels of lipids in the blood plasma.” Stedman’s Medical Dictionary at 922 (28th ed.)] and bipolar disorder. Id. She reported being able to walk two to three blocks at a time before she experienced a mild shortness of breath. She had a history of asthma and used albuterol for it. She said that she was having symptoms of asthma every day but that they were usually mild and well controlled. She denied any history of chest pain, claudication [“a complex of symptoms characterized by pain, tension, and weakness in a limb when walking is begun, intensification of the condition until walking becomes impossible, and

disappearance of the symptoms after a period of rest.” Dorland’s Illustrated Medical Dictionary at 1369] or significant shortness of breath with exertion. Id. Dr. Preciado-Riestra found her a low risk for general anesthesia and surgery. Id.

On May 6, 2008, about six weeks after her second salivary gland surgery, plaintiff returned again for a followup on her medications. AR 271. She told Dr. Preciado-Riestra that neck pain had prevented her from engaging in much physical activity. Id.

On June 11, 2008, plaintiff saw Dr. Preciado-Riestra for a followup visit for her bipolar syndrome and depression. AR 334. At this visit, she said nothing about neck pain or about any restricted range or motion or joint pain.

On September 9, 2008, plaintiff saw Dr. Preciado-Riestra, spending her time discussing her problems with her mother’s demands and emotional abuse. AR 335. She made no mention of neck or joint pain or limited range of motion.

On November 4, 2008, plaintiff saw Dr. Preciado-Riestra to obtain a certificate of disability. AR 337-38. Dr. Preciado-Riestra noted in relevant part that her medical problems included bipolar disorder with depression, sialoadenitis “[inflammation of a salivary gland,” Dorland’s Illustrated Medical Dictionary at 1705], post excision of salivary gland and lymph nodes on November 14, 2007 and March 2, 2008 and some residual pain. Id. He recorded her main symptoms on this visit as chronic back pain, occasional dizziness from medications, fatigue probably from not sleeping well, headaches, decreased vision, neck

stiffness, difficulty with exertion due to shortness of breath or cough. Id. “She says [she] can walk about two blocks and then she needs to seek [probably, “sit”] due to the hip pain and fatigue. She can not sit for prolonged periods of time, cannot stand for prolonged periods of time, cannot [do] overhead [activities,] can not move neck sideways [,] cannot tolerate moderate to high stress.” Id. He noted that she reported normal hand dexterity.

On examination, Dr. Preciado-Riestra found that plaintiff was in no acute distress; her range of motion in her neck was about 40 degrees to the right and 30 degrees to the left; she could not extend her neck; and she had some restriction in her neck flexion. Id. She had some tenderness around her supraclavicular areas and adjacent muscles; her shoulder muscles were symmetric with no ecchymosis [“A purplish patch caused by extravasation of blood into the skin.” Stedman’s Medical Dictionary at 606], no swelling or deformities. AR 338. Dr. Preciado-Riestra reported that “[f]lexion is full, abduction is full coming to moderate rotation is symmetric external rotation is symmetric and “oral” [perhaps “normal”?] his [sic] movements produce discomfort his scapula moves with abduction and adduction of the arms in a normal fashion.” He found plaintiff’s rotator cuff testing negative, as were her drop arm tests, empty can test and pushed off test. Id. He reported that plaintiff had had back pain since she broke her right hip in 1994. Id.

Dr. Preciado-Riestra’s assessment was that plaintiff had chronic disabling back pain, neck tenderness and decreased range of motion. Id. He wrote that he believed that plaintiff

“has chronic permanent back pain problems secondary to degenerative joint disease changes, postsurgical changes particularly in the cervical spine, chronic pain syndrome which renders her incapable of most physically demanding activities,” id., and that he would limit plaintiff to work that involved no lifting of more than 20 pounds, intermittent breaks in between work hours to allow for either sitting, standing or stretching, in a low stress occupation. He added that she might miss three to four days a month if either her bipolar syndrome or her musculoskeletal symptoms were exacerbated. Id.

Dr. Preciado-Riestra completed a physical residual functional capacity report for plaintiff on November 4, 2008, at the request of the Social Security Administration. AR 327. He reported diagnoses of bipolar disorder, asthma, anxiety, depression and sialoadentitis and he predicted that these diseases would continue throughout plaintiff’s life. Id. He said that plaintiff had limited range of motion of her neck and tenderness and that her neck pain was intermittent and equal to a six on a 10-point pain scale. Id. Dr. Preciado-Riestra thought her impairments were reasonably consistent with the symptoms and functional limitations he described in his evaluation. AR 328. In his opinion, plaintiff would experience pain severe enough to interfere with the attention and concentration she would need to perform even simple work tasks on an occasional basis, that she was capable of low stress jobs, that she could sit for 20 minutes without needing to get up, that she could stand for 20 minutes without needing to sit down, that she would need to walk around for

six minutes every 20 minutes and she would need a job that permitted her to shift positions at will and to take unscheduled breaks for rest of about 10-15 minutes twice during the day. AR 328-29. He said that plaintiff could frequently lift and carry less than 10 pounds, occasionally lift and carry 10 pounds but never carry 20 pounds or more, AR 329, that she could never look down or up for a sustained period of time and that she could turn her head to either side only occasionally but that she could hold her head in a static position frequently. AR 330. She could rarely twist, occasionally stoop, crouch and climb stairs and never climb ladders. Id. Dr. Preciado-Riestra estimated that plaintiff could reach overhead 10% of the day, grasp, turn and twist objects 50% of the day with either hand, and perform fine manipulations 70% of the day with either hand. Id. He thought plaintiff would have to miss work more than four days a month as a result of her impairments or treatment. Id. Finally, he stated that the limitations and symptoms described in the evaluation would have applied to plaintiff in September 2007. Id.

2. St. Michael's Hospital

Plaintiff had left submandibular surgery for removal of stones related to bilateral submandibular sialolithiasis at St. Michael's Hospital on November 14, 2007. AR 224. At a consultation before the surgery, she denied any history of joint pain or swelling, muscle pain, muscle soreness or persistent backaches. AR 225. She denied having headaches, gait

disturbance or faintness. Id. On examination, she was found to have a regular respiratory rate, rhythm and effort and diminished lung sounds throughout. AR 226. Her head and neck were stable without tenderness, masses or thyromegaly. Her range of motion and muscle strength were also normal. Id.

3. Gregory Benson, DDS

Six days after performing plaintiff's submandibular surgery, Dr. Benson saw her for followup and removal of her dressing. AR 238. Plaintiff reported minimal difficulties and said she was tolerating a near-normal diet and had minimal need for analgesic medication. Id.

At 13 days after surgery, Dr. Benson reported that plaintiff had "near complete resolution of her left cervical discomfort." AR 239. Plaintiff said she was concerned about the right side gland, but Benson recommended that she wait to have surgery on that gland for two to three months. This would allow the left side gland to heal and he could reevaluate the need for further surgery. Id.

On February 7, 2008, plaintiff reported to Dr. Benson that she had had no difficulty on her left side since her surgery but was experiencing intermittent pain in her right upper cervical area. AR 240. She said that the pain had been present from time to time over the previous seven years but that it had increased significantly and that her pain and swelling

seemed to be related to meals. Id. Plaintiff had surgery on her right submandibular gland on March 26, 2008, with no complications. AR 291.

C. Consulting Physicians

Pat Chan, M.D., prepared a physical residual functional capacity assessment of plaintiff on February 27, 2008. AR 262-69. Dr. Chan's primary diagnosis was salivary gland pain/removal. AR 262. He found that plaintiff could lift and carry 50 pounds occasionally and 25 pounds frequently, that she could stand or walk about six hours in an eight-hour work day with normal breaks and she could sit about six hours in an eight-hour work day with normal breaks, that she had no postural limitations and unlimited capacity to push or pull, within the limitations he gave her for lifting and carrying. AR 263-64. He assessed no manipulative, visual, communicative or environmental limitations on her work. AR 265-66.

Dr. Zhen Lu, M.D., determined on June 19, 2008 that plaintiff had a primary diagnosis of affective disorders but no secondary diagnosis. AR 60.

D. Hearing Testimony

1. Plaintiff's testimony as to physical restrictions

Plaintiff was represented by counsel at the August 20, 2009 hearing before the

administrative law judge. She testified that she was still having some pain in the left side of her neck, AR 34, but that, as a general rule, it did not affect her ability to eat. AR 35. She was still caring for her mother, who was 70. At the time of the hearing, plaintiff's mother needed her dressings changed following removal of her gall bladder and a hernia in May 2009. Plaintiff said she found this difficult because it was hard for her to keep her head down for long. She said she did the grocery shopping for herself and her mother, although her mother drove her to the store. She tried to buy food that could be heated in the microwave because she had trouble standing for long periods of time. AR 36.

Plaintiff testified that she did most of the cooking for her mother, as well as the dishes and walking her mother's dogs. Id. She said that since her operations, she could not turn her neck to the left, that she had limited movement to the right, that she could look downward for a couple of minutes at a time but that the doctor (she did not identify which one) had told her never to look straight upward. AR 37. She said she could not lift anything over ten pounds because of the strain it put on her back and that she could not reach overhead. Id. She said that she had a CAT scan and MRI on her neck in 2007, in connection with her salivary gland problem. AR 41.

Plaintiff told the administrative law judge that she had broken her back as a child and had been suffering "just a little bit," "to the point where [she has] to stand up once in a while." AR 42. She had not worked since September 5, 2006, when she quit her hotel

receptionist job to take care of her mother. AR 42. Plaintiff testified that her past work experience had been as a maid, cleaner, hotel receptionist and once for a short time, as a tire loader. AR 43-45.

2. Testimony of vocational expert

Dr. Metildi, the vocational expert, testified that she had heard the testimony at the hearing, that she had reviewed the evidence in the case and that she was familiar with occupations existing in Wisconsin and in the nation. AR 51. She classified plaintiff's past work as a front desk clerk/ receptionist at a hotel as light, semi-skilled work and her prior work as a hotel housekeeper as light, unskilled. AR 52.

The administrative law judge asked Metildi whether these same jobs could be performed by an individual of plaintiff's age, education level and work experience who could sit for six hours out of an eight-hour day, stand and walk for two hours out of an eight-hour day, allowed to change positions briefly every hour for one to three minutes, could occasionally lift and carry 20 pounds, frequently lift and carry 10 pounds, could handle no more than a moderate stress environment and no inherently stressful jobs, but could manage tasks that required three to four steps and limited contact with the public, and was capable of learning new tasks, preferably by written instruction. Metildi replied that the individual would not be able to do the past work, but she could handle sedentary jobs such as small

parts assembler, table worker and some kind of inspector (the word was inaudible to the transcriber), all of which are sedentary and unskilled. Metildi estimated that approximately 400 jobs as an assembler exist in Wisconsin, with 11,000 or so in the national economy; approximately 500 jobs as table worker exist in Wisconsin, with about 42,000 in the national economy; and 500 of the inspector jobs exist in Wisconsin, with about 19,000 in the national economy. AR 53.

Metildi testified that an individual who could perform light work with restrictions involving stress and dealing with the public could perform plaintiff's past work as a hotel housekeeper. AR 56.

In response to questioning by plaintiff's attorney, Metildi testified that no jobs would exist for a person who was precluded from looking downward for more than a couple of minutes and only infrequently, who could not look up at all and who could turn her head left or right only a few degrees and only occasionally. AR 53-54. She also testified that no jobs would exist for a person with all the limitations described who could not reach in all directions, even below the shoulder, or for any person who needed to have unscheduled breaks every ten to fifteen minutes to stretch her neck.

E. Administrative Law Judge's Decision

In reaching her conclusion that plaintiff was not disabled, the administrative law

judge performed the required five-step sequential analysis. 20 C.F.R. § 404.1520. At step one, she found that plaintiff had not engaged in substantial gainful activity since December 28, 2007, the application date. AR 22. At step two, she found that plaintiff had the severe impairments of bipolar disorder and dysthymic disorder, but no severe physical impairment. She was not persuaded that plaintiff's salivary gland condition was a severe impairment, when the record showed that the condition was improved by the two surgeries. "Following the first surgery, within two weeks the claimant was noted as having near complete resolution of her left cervical discomfort; tolerating a near-normal diet without difficulty; and having no need for analgesic medication." AR 22 (citing AR 239). She noted that plaintiff had reported neck pain on May 6, 2008, but no medication or any other treatment was prescribed, and that plaintiff had not mentioned neck pain at her June and September visits [to Dr. Preciado-Riestra]. Id. Although the doctor had found in a residual functional capacity questionnaire completed on November 4, 2008, that plaintiff had residual neck pain that prohibited her from working on a regular and continuing basis, his examination notes from the same date showed some limitation in plaintiff's range of motion in her neck but indicated that plaintiff was in no acute distress. Id. The administrative law judge found Dr. Preciado-Riestra's November 4 examination "generally inconsistent with the lack of complaints during previous visits," id., leading her to the conclusion that "the claimant's neck pain dissipated only to return again when she was undergoing a 'disability

examination.” Id. Relying on these findings, she concluded that plaintiff’s residual neck pain from her two salivary gland surgeries was a non-severe impairment. Id.

The administrative law judge dismissed plaintiff’s claims of neck pain and chronic low back and hip pain “secondary to degenerative joint disease changes . . . [and] chronic pain syndrome,” AR 22-23 (quoting Dr. Preciado-Riestra’s Nov. 4, 2008 report, AR 337-38). Nothing in the record showed that plaintiff had either complained of low back and hip pain or sought treatment for it. Moreover, the record included no imaging studies of the cervical spine, lumbar spine or hips to corroborate the doctor’s conclusion that any pain plaintiff was suffering would be secondary to degenerative joint disease. AR 23. In the absence of any objective evidence to support Dr. Preciado-Riestra’s diagnosis, the administrative law judge found that the impairments were not medically determinable. Id.

At step three, the administrative law judge found that plaintiff did not have an impairment or combination of mental impairments that met or equaled a listing in 20 C.F.R. § 404, Subpart P, Appendix 1 (29 C.F.R. §§ 416.90(d), 416.925 and 416.926). At step four, she found that plaintiff had the residual functional capacity to perform light work as defined in 20 C.F.R. § 416.967(b), with limited contact with the public, no more than moderate stress in the environment, no inherently stressful jobs and three to four-step tasks and that she was capable of learning new tasks with written rather than oral instructions. AR 25. In reaching that conclusion, the administrative law judge found that plaintiff’s

medically determinable impairments could reasonably be expected to cause some of the symptoms she was alleging but that her statements about the intensity, persistence and limiting effects of the symptoms were not credible. AR 26. She noted that plaintiff had had a global assessment of functioning score of 62, which was mild; her bipolar disorder was being treated with medications that she said were working well; and Dr. Preciado-Riestra's reports that she did not have the functional capacity to perform any work at all were not supported by his own treatment records or by any evidence, such as x-rays, magnetic resonance imaging or computerized tomography studies. AR 27.

The administrative law judge found that plaintiff could perform her past relevant work as a hotel housekeeper or front desk clerk. AR 28. Having made this finding, she concluded in step five that plaintiff had not been under a disability since December 28, 2007, the day on which she filed her application. AR 28.

OPINION

A. Standard of Review

The standard by which a federal court reviews a final decision by the commissioner is well settled: the commissioner's findings of fact are "conclusive" so long as they are supported by "substantial evidence." 42 U.S.C. § 405(g). Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

Richardson v. Perales, 402 U.S. 389, 401 (1971). The decision cannot stand if it lacks evidentiary support or “is so poorly articulated as to prevent meaningful review.” Steele v. Barnhart, 290 F.3d 936, 940 (7th Cir. 2002). When the administrative law judge denies benefits, he must build a logical and accurate bridge from the evidence to his conclusion. Zurawski v. Halter, 245 F.3d 881, 887 (7th Cir. 2001).

B. Plaintiff’s Disagreement with the Administrative Law Judge’s Decision

Plaintiff objects to the administrative law judge’s determination at step two, but the administrative law judge explained in detail why she did not find Dr. Preciado-Riestra’s opinion persuasive. It was not error for her to ignore the doctor’s report of neck pain at the second step of the sequential process, even though this step requires no more than a modest amount of medical support for the alleged impairment. Dr. Preciado-Riestra’s report did not provide even that modest support, for the reasons that the administrative law judge gave, and thus did not require her to call a medical expert to develop the record on that point.

Plaintiff argues that the administrative law judge “played doctor” when she rejected Dr. Preciado-Riestra’s findings, but that is a mischaracterization. It is not playing doctor to reject “findings” that lack any support in the record. Dr. Preciado-Riestra reported medical problems of which plaintiff had never complained to him before she came in for the social security evaluation, that were not supported by her medical history and, most important,

were not supported by objective medical evidence, such as x-rays or magnetic resonance imaging. This is not a situation in which the doctor was attributing to plaintiff medical problems that were hard to prove, such as fibromyalgia; he was reporting degenerative joint disease, postsurgical changes in plaintiff's cervical spine and old episodes of broken bones in her hip and back. Any of these problems should have been observable on x-rays or other kinds of images, yet Dr. Preciado-Riestra never ordered any to support plaintiff's application for benefits.

If Dr. Preciado-Riestra was relying for his finding of neck pain on plaintiff's own reports, he did not explain why plaintiff did not complain of such pain once she had healed from her surgeries or why, if the pain was so bad, he had not prescribed any medication after her second surgery when she was still experiencing pain.

Plaintiff cites 20 C.F.R. § 416.927(c)(1), which requires, as a general rule, that the commissioner give more weight to the opinions of treating physicians than to the opinions of doctors who do not have a chance to work with the patient over a period of time. In fact, if the treating physician's opinion on the nature and severity of a claimant's impairment is well supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record, the agency is to give it controlling weight. § 416.927(c)(2). In making that decision, the administrative law judge is to take into consideration "the length, nature, and extent of the treatment

relationship; frequency of examination; the physician's specialty; the types of tests performed; and the consistency and support for the physician's opinion.” Id. See also 20 C.F.R. §§ 404.1527(d)(2), 404.927(d)(2); Campbell v. Astrue, 627 F.3d 299, 308 (7th Cir. 2010).

In this case, the administrative law judge failed to articulate each of these factors, but relied on the last two, placing weight on the absence of any tests and the lack of consistency and support for Dr. Preciado-Riestra’s medical opinion in his reports. Although it would have been better had she discussed the length and nature of plaintiff’s relationship with Dr. Preciado-Riestra, the number of times plaintiff saw him (approximately 12 in one year’s period), and Dr. Preciado-Riestra’s specialty or lack of specialty, the factors she did discuss are so significant as to overcome the others. The one-year period in which plaintiff saw the doctor represented a relatively short treating relationship; plaintiff’s visits were primarily for her mental problems; and Dr. Preciado-Riestra was not a specialist in salivary gland problems, which is presumably why he referred plaintiff to ENT at her first visit. These facts distinguish this case from Campbell, in which the court of appeals pointed out that the treating physician was a specialist (a psychiatrist) who had treated the claimant monthly for 15 months and whose findings remained relatively consistent throughout the course of her treatment. Id.

Plaintiff contends that in ignoring her neck pain, the administrative law judge ignored

the state agency physician who found that plaintiff had physical limitations. Plaintiff is correct that the administrative law judge did not mention the findings of Dr. Chan, the state agency doctor, but those findings were not helpful to plaintiff. Dr. Chan assessed plaintiff's exertional ability as essentially unlimited, moderate at most, although he set maximum weight limits for lifting and carrying (50 pounds occasionally; 25, frequently).

Plaintiff also finds it internally inconsistent for the administrative law judge to limit plaintiff to light exertional work after failing to find that she had any severe physical impairments. As a technical matter, plaintiff is correct. This was an inconsistent finding, particularly in light of Dr. Chan's findings, but it is not a reason to overturn her decision. Not only did the administrative law judge's finding give plaintiff the benefit of the doubt but the fact that plaintiff had been able to perform at this level in the past gave the administrative law judge additional confidence in her finding that plaintiff could continue to perform at that level in the future.

Finally, plaintiff argues that the administrative law judge had an obligation under 20 C.F.R. § 404.1527(c)(3) to seek additional evidence if she found inconsistencies in Dr. Preciado-Riestra's reports. This rule does not apply unless the information in the record is inadequate to make a determination of disability. Simila v. Astrue, 573 F.3d 503, 516-17 (7th Cir. 2009) ("An ALJ is entitled to evaluate the evidence and explanations that support a medical source's findings. See 20 C.F.R. § 404.1527(d)(3). And she need not recontact

the source every time she undertakes such an evaluation, but only if, as we said in Barnett [v. Barnhart, 381 F.3d 654, 669 (7th Cir. 2004)], ‘the medical support is not readily discernable.’”) As in Simila, the information in the record in this case was not inadequate to make the determination; it simply failed to support Dr. Preciado-Riestra’s conclusions.

Plaintiff does not take issue with the administrative law judge’s step three determination, which is related solely to her plaintiff’s alleged mental impairments. She does object to the step four determination that she can continue to perform her past light work, with limitations relating to her mental problems, but her objections track those she raised about the step two determination that she had no severe physical limitations. The question is still whether Dr. Preciado-Riestra’s opinions carry any weight. The administrative law judge explained persuasively why they do not.

In summary, I conclude that the administrative law judge gave full consideration to plaintiff’s symptoms and the reports of her treating physician and that she had good reasons for concluding that plaintiff did not have physical restrictions that would prevent her from performing light work of the type she had previously performed. The conclusion is supported by substantial evidence.

ORDER

IT IS ORDERED that plaintiff Helen E. Henke's motion for summary judgment is DENIED and the decision of defendant Michael J. Astrue, Commissioner of Social Security, denying plaintiff's application for disability insurance benefits is AFFIRMED. The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 10th day of April, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge